



Legislative
Research
Council

MINUTES

Regional Watershed Advisory Task Force

Second Meeting
2013 Interim
Monday & Tuesday, July 1 & 2, 2013

Best Western Ramkota Hotel
1400 8th Avenue NW
Aberdeen, South Dakota

Monday, July 1, 2013

The second meeting of the interim Regional Watershed Advisory Task Force was called to order by Senator Mike Vehle, Vice Chair, at 9:00 a.m. (CDT), on Monday, July 1, 2013, at the Best Western Ramkota Hotel in Aberdeen, South Dakota.

A quorum was determined with the following members present: Senator Mike Vehle, Vice Chair; Representatives Dennis Feickert, Spencer Hawley, and Leslie Heinemann; Ms. Kim Vanneman; and Messrs. Dennis Duncan, Mike Jaspers, Rick Sommers, Paul Symens, and George Vandel. Members excused were: Representative Brian Gosch, Chair; and Senators Jason Frerichs, Tom Jones, and Russell Olson.

Staff members present included Tom Magedanz, Principal Research Analyst, and David Ortbahn, Principal Research Analyst.

All material distributed at the meeting is attached to the original minutes on file in the Legislative Research Council (LRC). The committee documents are available at the LRC website at <http://legis.state.sd.us> under "Interim Information – Committee Documents." For the purpose of continuity, these minutes are not necessarily in chronological order.

Minutes

MS. KIM VANNEMAN MOVED, SECONDED BY MR. MIKE JASPERS, TO APPROVE THE MINUTES OF APRIL 22, 2013. The motion prevailed unanimously on a voice vote.

Opening Remarks

Senator Mike Vehle, Vice Chair, welcomed everyone to the meeting and reviewed for everyone the directive of the task force as provided by statute.

LRC staff distributed maps of the major watersheds and water development districts in South Dakota (**Document 1**).

South Dakota Corn Growers Association

Mr. Matt McCaulley, South Dakota Corn Growers Association (SDCGA), distributed a handout (**Document 2**) and presented a Power Point presentation (**Document 3**) in which he

addressed the legislative background of the task force and outlined the legislative concepts the SDCGA and other agricultural groups would like the task force to consider.

He stated that the SDCGA and other agricultural groups agreed to the formation of the task force since water management cannot be adequately addressed with the currently regulatory system and the current state laws regarding water management need to be updated and reformed. He said that the state needs to continue to collect data and conduct research on how water management affects the environment and the economy in South Dakota. He said in concept that the SDCGA is open to water management organized by watersheds. He also commented about the difficult political realities that face the task force.

Mr. McCaulley commented that the following legislative principles should guide the task force: production agriculture is good for South Dakota; regulatory and tax policy should encourage productive use of land; we should seek a regulatory environment that is stable, predictable, and fair; and before making changes, the Legislature needs to define the problem. He also added regarding water management that private property rights must be respected, that any changes must be based on science and evidence, that additional government structures are not needed, that communication needs to be encouraged among landowners, and that there should be a move in the direction of water management districts.

Regarding possible legislation that the task force might consider, Mr. McCaulley indicated that the SDCGA and other agricultural groups had met and identified five possible areas of legislative action:

- (1) Mandatory mediation of disputes – this would encourage communication among neighbors and could possibly result in dollars otherwise spent on legal fees to be used to address the problem. The S.D. Association of Conservation Districts, S.D. Association of Cooperatives, S.D. Corn Growers, S.D. Farm Bureau, S.D. Famers Union, and S.D. Soybean Association are supportive in concept to legislation in this area;
- (2) Standardized notice for new drainage projects – this would not be a permit but would be required for new projects. This notice would encourage communication, and engineering would not be a condition of this notice. The Association of Conservation Districts, Association of Cooperatives, Corn Growers, Farm Bureau, Famers Union, and Soybean Association support this type of legislation in concept;
- (3) Catalogue infrastructure improvements – this would involve identifying existing systems and deficiencies, establishing a statewide database of the improvements and considering prior expenditures and designs before moving forward. The Association of Conservation Districts, Association of Cooperatives, Corn Growers, Farm Bureau, Famers Union, and Soybean Association support legislation like this in concept;
- (4) Fund research on best practices – this would involve doing research on the water management practices that would work best in the state. This is necessary since our soils are different than those in Iowa and Minnesota and we need to find out

what works best here. The Association of Conservation Districts, Association of Cooperatives, Corn Growers, Farm Bureau, and Soybean Association support this type of legislation in concept; and

- (5) Water management districts – this would divide the state into water management districts with political boundaries based on hydrology and drainage basins. The Corn Growers, Farm Bureau, Farmers Union, and Soybean Association support legislation creating these districts in concept.

In conclusion, Mr. McCaulley emphasized that there are no easy fixes to water management problems. The problem must be defined and common ground must be identified among the interested parties before the Legislature attempts to make changes in law.

South Dakota Soybean Association

Mr. Lorin Pankratz, South Dakota Soybean Association, commented about the possible legislative action addressed by Mr. McCaulley and indicated that the association was supportive in concept of those areas of possible legislation. He said mandatory mediation of watershed disputes has merit and that disclosure of new projects could be supported by the association. He said that check-off dollars could possibly be used to fund research on the best water management practices. He also commented that the liability questions currently facing county commissioners regarding the issuance of drainage permits is an area where the law could be clarified. He encouraged the task force to take a look at what is occurring in other states, especially Iowa and Minnesota. He concluded by saying the task force needs to take a broad approach when considering changes for the future.

South Dakota Farm Bureau

Mr. Wayne Smith, Executive Director, South Dakota Farm Bureau, commented that his organization is in favor of mandatory mediation and that the involved parties should pay for the costs of the mediation. He also favored compiling a list of past water management projects and maintaining a current list of projects. He mentioned that there were many water management and drainage projects completed in the early 1900s and that tiling could cause an overload of these facilities and structures. A statewide inventory of these projects would be helpful to plan for the future. Regarding funding for best practices research, he stated that research is important to help reduce the amount of nitrates getting into streams. Regarding water management districts, the Farm Bureau supported smaller districts versus larger districts. He said it would be important for water districts to communicate with other water districts. He concluded by saying the Farm Bureau supports effective water management.

South Dakota Farmers Union

Mr. Mike Traxinger, Legislative Director, South Dakota Farmers Union (SDFU), distributed a handout (**Document 4**) and presented a Power Point presentation (**Document 5**) in which he told the task force that resolving watershed management issues is one of the SDFU's top priorities. The SDFU believes the Legislature should address: a cleanup of existing statutes; whether or not county commissioners should be compelled to be an active drainage board

under state law; whether or not there should be a process to require specific permits for all drainage, both surface and tile, on a specific permit; whether or not drainage permits and mapping should be required; and whether or not all drainage records should be held within the respective county.

The Farmers Union held meetings in Brown, Clark, Day, Kingsbury, Marshall, and Roberts counties in June to discuss water management issues and the five possible areas of legislative action outlined by Mr. McCaulley. He said at these meetings 72 out of a total of 90 attendees completed a survey (**Document 6**). The survey showed that a large majority of the attendees do not believe the current drainage system is working. He said the survey also showed a large majority of the attendees supported mandatory mediation of disputes, standardized disclosure of new projects, the identification of water management assets, and the formation of water management districts in state statute. He told the task force that the SDFU supports these four areas of possible legislation. He told the task force that additional needs must be assessed prior to the group's support for the funding of the best practices research. He shared with the task force some of the comments from those county meetings.

Additional issues that Mr. Traxinger suggested that the task force discuss included the following: resources or grants to help fund a permitting system, how transportation and other infrastructure affect drainage systems, liability, costs, and drought management.

He concluded by saying that the task force's issues are complicated. A state framework is needed but local control needs to be maintained. He said it is important that there is collaboration on any legislative proposals and that SDFU is committed to helping find workable solutions.

South Dakota Wheat, Inc.

Ms. Caren Assman, Executive Director, South Dakota Wheat, Inc., Pierre, discussed the South Dakota Wheat, Inc. organization and its policies and noted that the organization will meet with its board in July and hold its annual meeting in December and will address the watershed management and drainage proposals that were discussed earlier at today's meeting. **Senator Vehle** asked whether South Dakota Wheat has policies in these areas, and Ms. Assman responded that they could probably support four of the five proposals. In response to a question by **Representative Spencer Hawley**, she stated that she did not know whether the organization would support the water management district proposal because it had not been discussed with the board.

South Dakota Association of Conservation Districts

Ms. Angela Ehlers, Executive Director, South Dakota Association of Conservation Districts, Pierre, provided a Power Point presentation entitled "Striking a Balance" (**Document 7**) and also distributed a handout dealing with drainage law in Iowa, Minnesota, and North Dakota (**Document 8**). She addressed concepts relating to regional watershed management and stated that water management is not exclusively a drainage issue, agricultural issue, or an East River issue. She discussed a drainage basin or watershed approach to water management issues and noted that many factors contribute, not just drainage. She said that

her organization supports mediation of drainage disputes and said it would be helpful to record the location of drainage projects and activity. She also noted the importance of seeing how other states approach watershed management and drainage issues. In response to questions by **Mr. Jaspers** and **Senator Vehle** about confusion over the names of various types of water-related special purpose districts and terminology relating to hydrologic units, Ms. Ehlers listed and described some of the districts in South Dakota and explained how hydrologic units are delineated. **Representative Leslie Heinemann** asked whether watershed management is an issue in western South Dakota as well as in East River and whether goals and concepts for water management can be set up that would apply to all areas of the state. Ms. Ehlers replied that there are water management issues in all parts of the state but they vary over water quality and water quantity and that issues in the east often have to do with managing excess water, while scarcity is a problem for much of the western part of the state.

Lake County, South Dakota

Mr. John Maursetter, Environmental Specialist, Lake County, Madison, provided a Power Point presentation (**Document 9**) describing drain tiling activity in Lake County and the county's drainage permitting process. He discussed the history of drainage districts and projects in Lake County that predate the 1985 county drainage law. He also discussed Lake County's 2002 drainage ordinance and how it is implemented. He stated that there has been a large increase in drainage permits issued and in tiling activity in the county in the last few years, and he noted that land use changes also impact drainage patterns. **Ms. Vanneman** asked whether there is a drainage permitting process for purposes other than agricultural drainage, such as drainage in urban areas, and whether different factors need to be considered in dealing with different types of drainage. Mr. Maursetter replied that most permitting in Lake County is for agricultural drainage, but in either case it is necessary to show impacts of the proposed activity. **Representative Hawley** asked whether the county has any problems or issues with its drainage permitting process and whether the county would object if drainage authority were to be transferred to a regional water management district. Mr. Maursetter answered that there are usually no major problems and stated that the county would probably like to continue with its drainage powers, although the county would like to have technical support from a regional entity. **Representative Hawley** also asked whether county representation on a regional water management district would make the concept of regional districts with drainage authority more palatable for the county. Mr. Maursetter said that it may help to some extent. **Representative Dennis Feickert** asked about penalties and enforcement for violations of the drainage ordinance. Mr. Maursetter said it is possible for the state's attorney to get an injunction to stop prohibited activity and that there are monetary penalties, but these are generally not used if the activity is halted. Many disputes end up in civil court. He said that it may be helpful to clarify penalties and enforcement options in state statute.

East Dakota, James River, and Vermillion Basin Water Development Districts

Mr. Jay Gilbertson, Manager of the East Dakota Water Development District in Brookings, and **Mr. Brad Preheim**, Manager of the Vermillion Basin Water Development District in Centerville, discussed watershed management and drainage issues. Mr. Preheim stated that there is more to watershed management issues than just drainage and tiling, and he noted

that the current system is broken in some instances and needs to be revised. He stated that they would prefer to see watershed management conducted on a regional watershed or drainage basin basis. Mr. Gilbertson and Mr. Preheim gave a Power Point presentation addressing a potential regional water management district system (**Document 10**). Mr. Gilbertson also distributed copies of House Concurrent Resolution 1010 (1997), which called for a study of water development districts, county drainage law, and other natural resource districts (**Document 11**). Mr. Gilbertson discussed the 1997 legislative interim study that addressed these issues and discussed the provisions of HB 1001 from the 1998 Legislative Session, which resulted from the 1997 study. HB 1001 would have converted water development districts into regional water management districts and would have transferred drainage regulation powers from the counties to the new water management districts. The districts would have followed approximate watershed basin boundaries, and new districts would have been created to cover the entire state. The districts would have had taxing authority.

Senator Vehle asked why HB 1001 did not pass in 1998. Mr. Gilbertson responded that including new areas of the state in new government entities with taxing power generated some of the opposition. The districts were viewed in some areas as creating an additional layer of government. **Mr. George Vandel** asked whether a statewide uniform permitting process for drainage regulation or a regional process would be preferable. Mr. Gilbertson answered that a uniform statewide procedure for all would be acceptable but the regional districts would be the ones to act on drainage permits and issues. **Representative Feickert** asked whether new governing boards would be selected for the districts that were converted from water development districts, and Mr. Gilbertson replied that there would probably be new elections. **Mr. Vandel** asked how other states in the region approach these issues and how they are organized for water management. Mr. Gilbertson described watershed districts in Minnesota (which are structured differently and have different powers than those in South Dakota) and Nebraska's natural resource districts (NRDs). **Representative Hawley** stated that he likes the concept of watershed-based regional districts, but some drainage basins, such as the James River, are very different in different parts of the basin. He also suggested county representation on water management district governing boards. Mr. Preheim stated that some districts could use a subbasin approach and that it could be structured so that there could be county representation at the district or subbasin level. He noted that some counties want to keep their drainage authority, while others have repealed their drainage ordinances, so the situation is mixed. Responding to a question by **Senator Vehle**, Mr. Gilbertson explained the differences between various water-related special purpose districts in South Dakota. **Representative Feickert** asked how water management districts would handle the liability issues that counties are concerned about. Mr. Preheim stated that the districts would have specialized, professional staff on hand, which could reduce the liability risk. He noted that whether drainage authority lies with counties or water management districts it would still be necessary to address liability issues in state law.

Public Testimony

Representative Jim Peterson, Revillo, distributed an example of a wetland determination by the Natural Resources Conservation Service (NRCS) on his property (**Document 12**). He discussed drainage regulation processes in Deuel and Grant counties as well as the NRCS

wetland determination process. He stated that tiling has increased his corn yields and that there has been a large increase in tiling in Minnesota in recent years. He also said that drainage regulation in Minnesota is a combination of authority between counties and districts and that both are involved. He noted that the main problem is that counties in South Dakota are worried about liability issues relating to drainage regulation.

Mr. Wayne Soren, Lake Preston, discussed some of the problems he has encountered in establishing a small watershed district under South Dakota's watershed district law (SDCL 46A-14) before it was revised in the 2013 Legislative Session. The purpose of the district would be to clean out and renovate an old drainage ditch that had been constructed under South Dakota's pre-1985 drainage district laws.

Mr. Roger Rix, Groton, Brown County Mud Creek Watershed District, thanked the task force for its role in revising and clarifying the South Dakota watershed district law during the 2013 Legislative Session. He discussed some of the difficulties in forming the watershed district before the law was revised and noted that the James River Water Development District provided assistance in forming the Mud Creek district.

Mr. Duane Sutton, Aberdeen, Brown County Commissioner, thanked the task force for meeting in Aberdeen and discussed drainage and water inundation problems in Brown County. He stated that Brown County has dissolved its drainage board and repealed its drainage ordinance and that there is little in state law to aid the county in enforcing its drainage authority.

Mr. Mike Elson, Hecla, stated that water is being moved into South Dakota and Brown County from North Dakota and said that we need to see what is being done in other states. He said it is necessary to improve public waterways but that the state should not rush into new laws without first looking at the alternatives. In response to a question by **Senator Vehle**, Mr. Elson said that wetlands mitigation should not be solely the responsibility of landowners, but that nonprofit groups who benefit from the mitigation should also pay part of the cost.

Mr. Arne Svarstad, Aberdeen, stated that tiling has beneficial aspects, including decreasing surface runoff and reduction of flooding and erosion and said that decision makers should pay attention to scientific expertise.

Mr. Troy Knecht, Houghton, member of the South Dakota Corn Growers board, discussed wet conditions in his area and said they need help to move James River area water downstream. He likes the water management district approach.

Mr. Jim Hundstad, Bath, former task force member, said that he appreciates the task force meeting in Brown County. He said there are many ideas and approaches, but new methods are needed to manage water problems. He stated that many issues are local decisions but local entities need regional expertise to assist them.

Mr. Paul Fuller, Clark, a drainage specialist for Westside Implements, discussed problems with SB 179 (2013), which would have established a uniform drainage permit application form

and was defeated during the legislative session. He stated that the permitting process should not be overly restrictive.

Mr. Gene Tisher, Amherst, provided written testimony (**Document 13**) discussing drainage and flooding problems in Brown and Marshall Counties.

Task Force Discussion

Mr. Gary Vetter, Brown County Planning/Zoning Director, briefed the committee on the tour planned for the following day of affected areas in northeastern Brown County, and a tour itinerary and map was distributed (**Document 14**). The task force briefly discussed the location, time, and topics for the next task force meeting. **Senator Vehle** stated that the next meeting should look at how other states in the area deal with water management and drainage issues.

Adjournment

MS. VANNEMAN MOVED, SECONDED BY REPRESENTATIVE FEICKERT, THAT THE MEETING BE ADJOURNED. Motion prevailed on a voice vote.

The chair adjourned the meeting at 5:00 pm.

Tuesday, July 2, 2013

Task Force members present for the tour on Tuesday, July 2, 2013, were: Senators Tom Jones and Mike Vehle (Vice Chair); Representatives Dennis Feickert and Leslie Heinemann; Ms. Kim Vanneman; and Messrs. Paul Symens and George Vandel. Staff members present were Tom Magedanz and Dave Ortbahn.

Tour of Affected Areas

Task force members toured areas in northeastern Brown County and parts of Marshall County that are affected by drainage and water inundation issues. The tour began at 8:30 am and ended at 12:45 pm.



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